



Venable, Baetjer, Howard & Civiletti, LLP
Post Office Box 34385
Washington, D.C. 20043-9998

In re Application of POLYMEROPOULOUS et al
U.S. Application No.: 09/446,628
Int. Application No.: PCT/US98/13071
Int. Filing Date: 25 June 1998
Priority Date: 25 June 1997
Attorney Docket No.: 31978-141234
For: CLONING OF A GENE MUTATION
FOR PARKINSON'S DISEASE

DECISION ON
RENEWED PETITION
UNDER 37 CFR 1.137(b)

This is in response to applicants' "Renewal Petition Under 37 C.F.R. § 1.137(b)" filed 12 October 2000.

BACKGROUND

On 25 June 1998, applicants filed international application PCT/US98/13071, which claimed priority of an earlier United States application filed 25 June 1997. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 30 December 1998. A Demand for international preliminary examination, in which the United States was elected, was filed on 25 January 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 25 December 1999.

On 23 December 1999, applicants filed a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371. The submission included the requisite basic national fee.

On 23 February 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), indicating that an oath or declaration in compliance with 37 CFR 1.497 is due along with a surcharge for providing an oath or declaration later than thirty months from the priority date. The Notification of Missing Requirements set a one month response period, which applicants extended by five months by paying the appropriate fee.

International application PCT/US98/13071 became abandoned as to the United States of America on 23 August 2000 for failure to respond to the Notification of Missing Requirements.

On 28 August 2000, applicants filed a petition to revive the abandoned application under 37 CFR 1.137(b) along with a declaration.

On 26 September 2000, this Office mailed a decision dismissing the 28 August 2000 petition on grounds that the declaration filed 28 August 2000 was improper.

On 12 October 2000, applicants filed the present renewed petition. The renewed petition states that it is accompanied by declarations in compliance with 37 CFR 1.497.

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

Items (2), (3), and (4) have been previously satisfied.

With regard to item (1), the declarations filed 12 October 2000 are acceptable under 37 CFR 1.497 with respect to five of the six inventors. The declaration executed by inventor Robert Nussbaum is not acceptable. Specifically, pages 1 and 2 of the declaration appear to be original sheets, but page 3 of the declaration appears to have been transmitted by facsimile. This suggests that the first two pages of the declaration were not associated with the signature page at the time of execution, thus rendering the execution improper. Applicant must provide a complete declaration which is presented to and signed by Robert Nussbaum.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.137(b) is DISMISSED without prejudice.

If reconsideration on the merits of this decision is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)" and a declaration properly executed by Robert Nussbaum.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to the attention of the PCT Legal Office.



Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614

Facsimile: 703-308-6459